The doctrine of *Rylands* v. *Fletcher* has been generally disapproved in this country, Burdick, Torts, 447, the American courts inclining to a liberal attitude where modern improvements in transportation are concerned. All vehicles which appear to be reasonably adapted to road use have *prima facie* equal rights in the use of public ways, regardless of their form or means of locomotion; *Macomber* v. *Nichols*, supra; *Holland* v. *Bartch* (1889) 120 Ind. 46; *Rice* v. *Buffalo &c. Co.* (N. Y. 1897) 17 App. Div. 462; liability in such cases must rest upon negligence. *Mullen* v. *Glens Falls* (N. Y. 1886) 11 App. Div. 275; *Miller* v. *Addison* (1903) 96 Ind. 731. So ordinances prohibiting the use of any class of vehicles have been held void, *Bogue* v. *Bennett* (1901) 156 Ind. 478, and it is generally recognized that roads and bridges must be kept sufficient for use by traction engines where such use is common. *Coulter* v. *Township* (1894) 164 Pa. 543; *Johnson* v. *Highland* (1905) 124 Wis. 597. It has even been held that a heavy engine, though improperly used in starting and in turning corners, to the serious injury of the roads, may be so operated provided the damage caused in such places is not greater than the wear and tear on the whole road that would be incident to moving the same weight by wagons. *McCarter* v. *Ludlum Steel Co.* (N. J. 1906) 63 Atl. 761. While it is believed that this case goes too far, 6 COLUMBIA LAW REVIEW 595, it seems clear that it is more representative of the American attitude than is *Chichester Corporation* v. *Foster*, supra. In making the measure of liability in such cases the use of care commensurate with the risk, and holding an injury resulting in spite of due care, as in the case last mentioned, damnum absque injuria, the courts of this country have shown a tendency to favor improved highway facilities which is highly desirable.

JOINDER OF PARTIES IN ACTIONS TO ENJOIN POLLUTION OF STREAMS. —Beside the absolute right of every riparian owner to the natural flowage of the stream, *Dickinson* v. *Canal Co.* (1852) 7 Exch. 282; *Tourtellot* v. *Phelps* (1855) 4 Gray 370, and to the ordinary use of the water for natural and domestic purposes, *Wilts* v. *Waterworks Co.* (1874) L. R. 9 Ch. App. 451, 457; *Union Co.* v. *Ferris* (1872) 2 Sawy. 176, 191, there are recognized other rights of use for manufacturing and other non-domestic purposes, *Elliot* v. *Railroad Co.* (1852) 10 Cush. 191, inferior to the right of ordinary use, *Crandall* v. *Woods* (1857) 8 Cal. 136, 141, and to be confined within reasonable limits, with due regard to similar rights of other proprietors. *Prentice* v. *Geiger* (1878) 74 N. Y. 341. An unreasonable use, resulting in appreciable injury, may be made the subject of an action for damages, *Prentice* v. *Geiger*, supra; or, if the injury is irreparable, it may be enjoined. *Wright* v. *Moore* (1863) 38 Ala. 593, 599. Since the riparian owner's right is to the ordinary flowage, not only in volume, but in purity, *Snow* v. *Parsons* (1856) 28 Vt. 459, 461, any use of the stream which defiles it to an appreciable degree is an invasion of his right, constituting either a trespass or a nuisance, according to the character of the injury. *Mason* v. *Hill* (1833) 5 B. & Ad. 1; *Townsend* v. *Bell* (1893) 24 N. Y. Supp. 193.

A recent decision in New York illustrates the nature of the remedy

which equity will supply for infringement of these rights. The plaintiff, a riparian owner, sought to enjoin forty independent defendants, upper riparian proprietors, in a single action to restrain them from discharging the refuse from their factories into the river, resulting in the pollution of the stream to such an extent that the plaintiff's business was injured. The court overruled the demurrers for multifariousness, and granted the injunction. *Warren* v. *Parkhurst* (1906) 78 N. E. 579. Several analogous cases have been previously decided in the same way, in that state and elsewhere. *Strobel* v. *Kerr* (1900) 164 N. Y. 303; *Montecito Co.* v. *Santa Barbara* (1904) 144 Cal. 578; *Blaisdell* v. *Stephens* (1879) 14 Nev. 17; *Draper* v. *Brown* (1902) 115 Wis. 361. But the principal case was complicated by the fact that the damages suffered from the pollution by any one defendant alone were inappreciable, and that consequently it was impossible to say that the defendants could have been enjoined in separate suits, and at least doubtful whether they were separately liable at all. By holding that the nuisance was created, not at the time of depositing the refuse in the stream, but at the moment when the plaintiff was injured, for which there is apparent authority, *Woodruff* v. *Mining Co.* (1883) 8 Sawy. 628, and that the defendants were all joint tort-feasors co-operating in fact in the production of the nuisance, this difficulty would be obviated. But the New York courts, though accepting the concert of action test, have held that the cause of action arises at the time when the refuse is deposited in the stream, *Chipman* v. *Palmer* (1879) 77 N. Y. 51, and the defendants were therefore not joint tort-feasors. See 4 COLUMBIA LAW REVIEW 367. It follows that upon each separate defendant there was imposed the somewhat novel duty of refraining from depositing his quota, in itself nominal, because of his knowledge that others were contributing theirs, and that thus the plaintiff was being injured. This proposition, though recognized in *Lambton* v. *Mellish* (1894) 63 L. J. Ch. D. 929, is flatly denied in at least one American jurisdiction. *Hillman* v. *Newington* (1880) 57 Cal. 56, 64.

Interpreting the status of the defendants as does the court, we are confronted with the much discussed question, shall the plaintiff be permitted to join in a single bill for an injunction a number of separate defendants, whose defenses may be essentially different. The unqualified affirmative of the court, though it makes plain to what lengths the courts of this state will go in broadening the scope of the jurisdiction to prevent a multiplicity of suits, is in line with the cases, which have reached extreme positions in allowing joinder, both in tort, *Lockwood* v. *Lawrence* (1885) 77 Me. 297, and in contract. *Fegelson* v. *Insurance Co.* (1905) 94 Minn. 486. In the principal case the plaintiff had a common right against defendants, with a common interest. But, despite repeated assertions that such community of interest is sufficient to justify a joinder of the parties, 1 Pomeroy, Eq. Jur. (3rd ed.) §§ 255–274, it is sometimes difficult to reconcile these authorities with the fundamental principle that the joinder must result in a simplification or consolidation of the issues. *Hale* v. *Allinson* (1902) 188 U. S. 77; *Lehigh Valley Ry. Co.* v. *McFarlan* (1879) 31 N. J. Eq. 730. In case some of the defendants should set up defenses sustainable by entirely distinct evidence, the practice adopted in *National Park Bank* v. *Goddard* (1892) 131 N. Y.

494, 504, of dismissing the complaint as to them at trial, would be productive of little benefit to the court and vexatious to the parties. Of course, if the test of general convenience is to be substituted for the more scientific one requiring real simplification of the issues, enough saving may be found in these cases to outweigh the danger of laxity in pleading. At the same time the English practice of bringing separate suits and having them tried together, *Blair* v. *Deakin* (1887) 57 L. T. N. S. 522, appears preferable.

CRIMINAL INTENT UNDER PENAL STATUTES.—A few exceptions are generally recognized to the proposition that, because of the necessity of criminal intent, a principal is not criminally liable for the acts of his agent, unless the agent acts, not merely within the scope of his employment as in civil cases but upon actual authority, express or implied. Clark & Marshall, Law of Crimes §193. In the first, that of public nuisance, the leading case is *Rex* v. *Dixon* (1814) 3 M. & S. 11. There, however, the jury found that the defendant knew to some extent of the use of the noxious ingredient relied on, and he was therefore held for failure to use proper precaution. The later case of *Rex* v. *Medley* (1834) 6 C. & P. 292, decides squarely that the officers of a gas company were responsible for a nuisance created without their knowledge by their employees. This authority has been accepted to some extent in the United States. *Hunter* v. *State* (Tenn. 1858) 1 Head 160. The only tenable ground for this position is that more recently taken in *Regina* v. *Stephens* (1866) L. R. 1 Q. B. 702, that although the proceedings upon a public nuisance are criminal in form, they are in substance civil, and not for punishment primarily but for abatement in the interest of the many injured. See also Wharton, Crim. Law § 1420.

Under a second exception, the courts hold a principal criminally liable for the unauthorized publication of a libel by his agent. After considerable conflict in the decisions, cf. *Lamb's Case* (1610) 9 Co. 59; *Rex* v. *Dodd* (1724) 11 Sess. 33, it was determined in *Rex* v. *Almon* (1770) 5 Burr 2686, that publication of a libel by an agent was *prima facie* evidence of his principal's privity. Later, on the authority of *Rex* v. *Dodd*, supra, the absolute liability for an unauthorized publication was established. *Rex* v. *Gutch* (1829) M. & M. 433. Though the rule has been generally followed in the United States, Townshend, Slander & Libel § 123, its injustice has been partially remedied by statutes, 6 & 7 Vict. c. 96 § 7; N. Y. Penal Code § 246, which re-establish the doctrine of *Rex* v. *Almon*, supra.

In a case recently decided in Washington it was held that the owner of a saloon was criminally liable for the unauthorized sale of liquor to a youth of seventeen under a statute putting a penalty upon the sale of liquor to minors. *State* v. *Constatine* (1906) 86 Pac. 384. It is often said that penal statutes constitute a third exception to the rule first laid down, Smith, Master & Servant (4th ed.) 273, and *Atcheson* v. *Everett* (1776) Cowp. 382, is cited as the leading case for the proposition. In that case Lord Mansfield said that "this is as much a civil action as an action for money had and received. There is no authority that a penal